

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**CRYSTAL A. MARKS,**

**Plaintiff,**

**vs.**

**Civil Action No. 2:07 CV 38  
(Maxwell)**

**MICHAEL J. ASTRUE,  
COMMISSIONER OF  
SOCIAL SECURITY,**

**Defendant.**

**ORDER**

It will be recalled that the above-styled social security appeal was instituted on May 9, 2007, with the filing of a Complaint by the Plaintiff, Crystal A. Marks.

It will further be recalled that the case was referred to United States Magistrate Judge John S. Kaull in accordance with Rule 83.12 of the Local Rules of General Practice and Procedure.

On August 16, 2007, a Motion For Summary Judgment was filed on behalf of the Plaintiff, and on September 10, 2007, a Motion For Summary Judgment was filed on behalf of the Defendant.

On July 3, 2008, Magistrate Judge Kaull entered a Report And Recommendation (Docket No. 14) wherein he recommended that the Defendant's Motion For Summary Judgment be granted, and that the Plaintiff's Motion For Summary Judgement be denied.

In said Report And Recommendation, the parties were directed, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e) of the Federal Rules of Civil Procedure, to file

any written objections thereto with the Clerk of Court within ten (10) days after being served with a copy of said Report And Recommendation. Magistrate Judge Kaull's Report And Recommendation expressly provided that a failure to timely file objections would result in waiver of the right to appeal from a judgment of this Court based thereon.

The docket in the above-styled civil action reflects that the Plaintiff's Objection To Proposed Findings Of Fact And Recommendation For Disposition was filed on July 11, 2008. The Defendant's Response To Plaintiff's Objections To The Report And Recommendation Of Magistrate John S. Kaull was filed on July 17, 2008.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are made. Thomas v. Arn, 474 U.S. 140, 150 (1985).

As previously noted, on July 11, 2008, the Plaintiff filed an Objection To Proposed Findings Of Fact And Recommendation For Disposition. The Court has conducted a *de novo* review only as to the portions of the Report and Recommendation to which the Plaintiff objected. The remaining portions of the Report And Recommendation to which the Plaintiff has not objected have been reviewed for clear error.

The Court finds that the Plaintiff has not, in her Objection, raised any issues that were not thoroughly considered by Magistrate Judge Kaull in said Report And

Recommendation. The Court is of the opinion that Magistrate Judge Kaull's Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled action. Accordingly, it is

**ORDERED** that Magistrate Judge Kaull's Report And Recommendation (Docket No. 14) be, and is hereby, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that:

1. The Defendant's Motion For Summary Judgment (Docket No. 11) is **GRANTED**;
2. The Plaintiff's Motion For Summary Judgment (Docket No. 10) is **DENIED**; and
3. The above-styled civil action is **DISMISSED** and **RETIRED** from the docket of this Court.

Pursuant to Rule 58 of the Federal Rules of Civil Procedure, the Clerk of Court is directed to enter a separate Judgment Order affirming the decision of the Defendant.

The Clerk of Court is directed to transmit copies of this Order and the Judgment Order to counsel of record.

**ENTER:** August 6, 2008

**/S/ Robert E. Maxwell**  
United States District Judge